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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,698	12/22/2000	Franco Travostino	120-201	4557
34845	7590	06/23/2010		
Anderson Gorecki & Manaras LLP				
33 NAGOG PARK				
ACTON, MA 01720				
EXAMINER				
EL CHANTIL, HUSSEIN A				
ART UNIT		PAPER NUMBER		
2457				
NOTIFICATION DATE		DELIVERY MODE		
06/23/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

**Application No.**

09/748,698

**Applicant(s)**

TRAVOSTINO, FRANCO

**Examiner**

HUSSEIN A. EL CHANTI

**Art Unit**

2457

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Response to Amendment***

1. This action is responsive to RCE received on April 28, 2010. Claims 1-46 are pending examination.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 10-15, 17-19, 26 and 37-46 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In particular, claim 10 recites in the preamble "a device...comprising", the body of the claim does not contain any limitations indicating the structure of the device. A system or an apparatus claim should always claim the structure or the hardware that performs the function. Applicant's claimed limitations consist of modules (software according to the specification) that do not describe the structure of the device. Appropriate correction is required.

Claims 37-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are ambiguously constructed and indeterminate in scope because they purport to claim both a system and method.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- 3.** Claim 10-15 and 17-26, 28 and 37-46 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 10-15, 17-19 and 26 recite in the preamble "a device...comprising." The body of claims 10-15 and 17-19 recites "logic" for each limitation which is software. Therefore claims 10-15 and 17-19 are non-statutory because it is directed towards software, per se, lacking storage on a medium, which enables any underlying functionality to occur. It is not clear whether instructions are in executable form and therefore there is no practical application.

Claims 20-25 and 28 are rejected as computer programs per se, i.e., the descriptions or expressions of the programs. Such programs are not physical "device or structure" nor are they statutory processes, as they are not "acts" being performed. The computer programs do not define any structural and functional interrelationships between the computer program and other claimed aspects of the invention which permit the computer program's functionality to be realized. A claim to a non-transitory computer storage medium encoded with functional descriptive material that can function with a computer to effect a practical application that results in a useful, concrete and tangible result would be statutory.

Claims 37-46 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 37-46 embrace or overlap two separate statutory classes of invention set forth in 35 U.S.C. 101 in a single claim. A claim of this type is precluded by the express language of 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. Each statutory class of claims must be considered independently on its own merits, see *Ex parte Lyell* (BdPatApp&Int) 17 USPQ2d 1548 *Ex Parte Lyell*.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 42-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee, U.S. Patent No. 6,061,563 in view of Abramson et al., U.S. Patent No. 6,539,494 (referred to hereafter as Abramson).

As to claim 42, Lee teaches a terminal device accesses a communication network through one of a plurality of access point devices that implement a first protocol layer of a wireless communication protocol and a back end device that implements a first protocol layer of the wireless communication protocol, a method for using information related to the terminal device, the method comprising: saving information for the terminal device by the back end device; and using the saved information to facilitate

establishment of connectivity with a first wireless access point (see col. 3 lines 44-col. 4 lines 35).

As to claim 43, Lee teaches the method of claim 42, wherein using the saved information comprises: using the saved information for accounting purposes (see col. 3 lines 44-col. 4 lines 35).

As to claim 44, Lee teaches the method of claim 42, wherein using the saved information comprises: using the saved information for network management purposes (see col. 3 lines 44-col. 4 lines 35).

As to claim 45, Lee teaches the method of claim 42, wherein using the saved information comprises: using the saved information for user tracking purposes (see col. 3 lines 44-col. 4 lines 35).

As to claim 46, Lee teaches the method of claim 42, wherein using the saved information comprises: using the saved information for user locating purposes (see col. 3 lines 44-col. 4 lines 35).

5. Claims 1-7, 9 and 30-36 are allowable over prior art of record.

***Response to Arguments***

6. Applicant's arguments have been fully considered but are not persuasive. Applicant argues in substance that Lee and Abramson do not disclose do not prevent or repair failure and does not send the connection information back to the first wireless access point. In response, these limitations are not in claim 42.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to 698 whose telephone number is (571)272-3999. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571)272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Hussein El-chant/  
Primary Patent Examiner

June 18, 2010